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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1901~~. 1902.

No. ~~559~~. 248.

THE UNITED STATES, APPELLANT,

vs.

EDWARD A. MOSELEY.

APPEAL FROM THE COURT OF CLAIMS.

FILED FEBRUARY 24, 1902.
(18413)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 559.

THE UNITED STATES, APPELLANT,

vs.

EDWARD A. MOSELEY.

APPEAL FROM THE COURT OF CLAIMS.

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Court of Claims.

EDWARD A. MOSELEY }
vs. } No. 22494.
THE UNITED STATES. }

I—PETITION. *Filed January 28, 1901.*

To the Honorable the Chief Justice and Associate Justices of the Court of Claims:

The petition of Edward A. Moseley respectfully showeth:

I. That the petitioner is a citizen of the United States, and is the secretary and the disbursing agent of the Interstate Commerce Commission; that he has, since its organization, disbursed the moneys appropriated by Congress to carry out the objects of an act entitled "An act to regulate commerce," approved February 4, 1887; that these disbursements have always been made by direction of the said Commission, acting under the authority of section 18 of the said act as amended March 2, 1889; that in accordance with law, on September 30 and on December 31, 1898, and on March 31 and on June 30, 1899, the petitioner submitted his accounts and vouchers as said disbursing agent for the quarter and the year ending June 30, 1899, and on September 30 and on December 31, 1899, his supplemental accounts and vouchers for the year ending

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June 30, 1899, to the auditor for the State and other Departments; that the said auditor disallowed an item in said accounts of three hundred and ten dollars and thirty-seven cents ($310.37), that being the aggregate amount paid to the Western Union Telegraph Company, and to the Postal Telegraph Cable Company, by your petitioner, under the direction of the said Commission, for the transmission of telegraphs on the official business of the Interstate Commerce Commission; one of the vouchers for which is hereto attached as an exhibit and marked "Exhibit A."

II. That from such action of the Auditor for the State and other Departments in disallowing the item of $310.37 your petitioner appealed to the Comptroller of the Treasury, to whom, under the statute in such cases made and provided, an appeal regularly laid from the decision of the Auditor, a copy of which is herewith attached, marked "Moseley—Exhibit B."

III. That your petitioner received from the office of the Comptroller of the Treasury a communication bearing date July 23, 1900, a copy of which is hereafter filed, marked "Moseley—Exhibit C," from which it appears that the item of $310.37 had been disallowed by the Auditor for the State and other Departments, "because of failure to furnish copies of all telegrams for which charge was made, or to furnish a certificate that such telegrams are of such a confidential nature that to file them with the accounts would be prejudicial to the public interests."

The communication then proceeds to review the case of Edward A. Moseley v. The United States, No. 21473, of the term of '98–99 of the Court of Claims, which was decided April 2, 1900, in favor of the petitioner, and concludes as follows:

"I can see no reason why the rule that is applied to the War Department and to all other departments of the Government should not apply

to the Interstate Commerce Commission. The fact that the Commission may send confidential telegrams where secrecy is a public necessity should not be made the excuse for the retention of all telegrams. * * *

To this general rule there is an exception. If the Chairman of the Interstate Commerce Commission had certified that any particular
3 telegrams sent by the Commission were of a confidential character and that it would be prejudicial to the public interest to disclose their contents, and such certificate covered all material points necessary to a correct audit, such certificate would have been accepted in lieu of the telegrams. Such a requirement is not unreasonable, and I can not see that it will work any greater inconvenience to the Commission than it does to all the other departments of the Government.

"The certificate should be signed by the chairman of the Commission, and the account should be attached to it and made part of it by distinguishing marks, so that it is made certain that the particular account is supported by the certificate.

"The action of the Auditor is affirmed, and upon revision I find and certify no differences."

IV. Petitioner charges that the amount of $310.37 disallowed as above shown was duly paid out and expended by him, under the direction of the Interstate Commerce Commission, for the transmission of telegrams on public business of said Commission, and he herewith appends a true copy of itemized vouchers approved by the chairman of the Interstate Commerce Commission upon which such expenditure was made, and he further appends a copy of the order made by the Interstate Commerce Commission on the 27th day of April, 1899, in regard to the demand of the Comptroller that copies of telegrams should be furnished to him with the quarterly accounts of the disbursing agent, and he charges that the provisions of this order were, by an order of the Commission dated June 7, 1900, made to apply to the messages covered by the vouchers disallowed by the Auditor in the case now under consideration, as will appear by the communication from the office of the Comptroller of the Treasury of July 23, 1900. Copies of said orders are hereto attached and marked "Exhibit G."

V. Petitioner charges that the statement of his account for the quarter ending March 31, 1900, was in the form prescribed by the statute, i. e., "Itemized vouchers therefor approved by the chairman of the Commission." Neither the Auditor nor the Comptroller of the Treasury con-
4 trovert the fact of the expenditures therein shown to have been made under the direction of the Commission, nor of the money paid into the Treasury by your petitioner to cover the amount of disallowance of $310.37. That the present case is in all its material features identical with the case decided by the Court of Claims between the same parties on April 2, 1900, except that in the present case the item was disallowed by the Auditor for the State and other Departments, and that action was affirmed by the Comptroller of the Treasury.

VI. Petitioner charges that full and substantial compliance has been made with the requirements of the Auditor's Office by the order of the Interstate Commerce Commission on June 7, 1900, and that the rule now sought by the Auditor and the Comptroller to be applied to and enforced against the Interstate Commerce Commission is not "the rule that is applied to the War Department, and to all the other Departments of the

Government," because, as your petitioner avers to be the truth, the exaction of copies of all telegrams sent and received and charged for in the several Executive Departments of the Government in the District of Columbia has never been enforced by the auditing officers in the Treasury or by the Comptroller of the Treasury in auditing the accounts of the disbursing officers of these Executive Departments, but the course of business as to the telegrams sent and received by the Executive Departments of the Government has been, and at the present time is, as follows:

All bureaus of the Treasury Department furnish copies of all telegrams, with the exception of the Secret Service Bureau, which furnishes the following certificate with each quarter's account in lieu of copies of telegrams, which is either signed by the Secretary, or Assistant Secretary by his order, and is as follows:

TREASURY DEPARTMENT,
OFFICE OF SECRETARY,
Washington, D. C.

I hereby certify that telegrams sent and received, charged for in the above bill, have been carefully read and examined, that they were on public business, that they were rendered necessary by the exigencies of the service, that the number of words, number of messages, their dates and places to and from which transmitted are correctly stated, and that the rates charged and allowed are the Government rate established for the fiscal year ending June 30, 19 .

It is further testified that it is inexpedient to attach the original telegrams to the accounts, that they were of such a confidential nature that it would be prejudicial to the public interest to have them exposed.

Approved:

Secretary or Assistant Secretary.

The State Department furnishes no copies of telegrams in any case, whether of a confidential nature or not. During the first part of 1900 the accounting officers of the Treasury Department demanded copies of telegrams from the State Department; and the following is an extract of the only reply that has ever been made to that demand:

JANUARY 26, 1900.

TO THE AUDITOR FOR STATE AND OTHER DEPARTMENTS,
Washington, D. C.

SIR: I have the honor to inform you that the withholding of the telegrams from the accounts of the above-mentioned disbursing officer is with the approval of this Department upon representation of the United States commissioner that many of the telegrams are of such a confidential nature that it is deemed inadvisable to accompany the vouchers with copies.

This is the last and only reply made to the accounting officers, and the State Department has never heard from the Treasury since in regard to same, and has never furnished any telegrams, notwithstanding which all telegraphic accounts have been allowed.

The War Department withholds some of the original telegrams from their accounts as being of a confidential nature, and furnishes the following certificate:

"I certify that the messages charged in the within-named account of

the Western Union Telegraph Company, amounting to $, were actually transmitted and that it would be prejudicial to the public interest to have them exposed; that they were on public business and contained
6 the number of words as charged; that they were day messages and no directions were given for transmission over a bond-aided line; that they have not been paid, and that they are payable from contingencies of the Army."

The Weather Bureau does not furnish any telegrams with their accounts, but they have notified their Auditor that they would furnish them at any time he demands them, but they claim that the reason they have not been furnished to or asked for by the accounting officer is that there is an understanding between them that there is a form used in stating the temperature from different points, and as all such telegrams contain the same number of words one original copy would cover the whole number in that regard.

The Navy Department furnishes a certificate with each quarter's accounts, as follows, viz, "Confidential: Would be prejudicial to public interests to transmit telegrams with vouchers."

The Post Office Department furnishes all telegrams, but have been doing so only within the last year. This is due to an order of the Comptroller of the Treasury requiring it to furnish a copy of each telegram to the Auditor, with the statement of each quarter's accounts.

The Interior Department and the Agricultural Department—with the exception of the Weather Bureau—furnish all telegrams with their accounts and make no exception.

In fact, the usual and ordinary course of business as to telegrams sent and received to and by all of the Executive Departments of the Government within the District of Columbia was, certainly as late as November 23, 1899, as is set forth in a stipulation in writing, entered into between petitioner on the one part and the United States, through its Assistant Attorney-General, on the other part, in the case lately pending between those parties in this court upon a similar cause of action, which stipulation is herewith appended, and since said date, and, as petitioner is informed, believes and so charges, has been and is as there
7 stipulated.

VII. That your petitioner is directed and controlled altogether by the Interstate Commerce Commission, whose secretary and disbursing agent he is, and whose orders he is bound to obey. That he is without power to comply with the order or demand of the Auditor
8 for the State and other Departments, and of the Comptroller, because of the order of the Interstate Commerce Commission of the 27th of April, 1899, and of the 7th of June, 1900, both of which were duly communicated to the Auditor and to the Comptroller, and because, further, that the telegrams, the production of which is required by the auditing officers, are not within the custody or under the control of your petitioner, but are under the exclusive custody and control of the Interstate Commerce Commission.

VIII. That, with the view of arriving at a satisfactory adjustment of the differences existing between the auditing officers of the Treasury and your petitioner, your petitioner did, on the 4th day of October, 1900, address to the Comptroller of the Treasury a communication in which, among other things, it was stated as follows, viz:

"I am authorized by the Commission to extend to the officers and agents referred to in this section (section 5 of the act of March 15th, 1898, acts 1897–8, 316) the fullest opportunity of making such examination in the offices of the Commission of all such books, papers, and other matter relating to the accounts of the disbursing agent as they may see proper to examine, and among these all such telegrams as are embraced in accounts of the disbursing agents. By this means the objections which the Commission have made to the undue publicity of their telegrams will, in some measure, be avoided, and the purposes of the auditing officers should thereby be fully attained."

This communication is hereby appended, marked "Moseley—Exhibit D." To which communication your petitioner received a reply from the Comptroller of the Treasury, dated October 6, 1900, and herewith appended, marked "Moseley—Exhibit E." From all which it seems that the auditing officers of the Treasury are not at all disposed to be guided by the decision of the Court of Claims in the case above referred to, nor are disposed to avail themselves of the opportunity tendered to them of actually inspecting all the telegrams embraced in the accounts of
9 your petitioner and on file in the office of the Interstate Commerce Commission, but they appear inclined rather to stand rigidly upon their own unreasonable regulations.

In the opinion of the Court of Claims in the former case of Edward A. Moseley v. The United States, decided April 2, 1900, it is said:

"We are therefore inclined to the opinion that while the language that 'hereafter expenses of the Interstate Commerce Commission shall be audited by the proper accounting officers of the Treasury' did not repeal the former act requiring the payment of such expenses to be made 'on the presentation of itemized vouchers therefor, approved by the chairman of the Commission,' it did nevertheless so modify it as to subject such expenses to audit 'by the proper accounting officers of the Treasury,' and that such audit necessitates an examination as to the correctness and legality of such expenses, with such satisfactory proofs thereof as may be required by the accounting officers."

This "satisfactory proof" your petitioner has offered to place before the auditing officers, under such reasonable conditions as would afford them the fullest scope of examination without exposing the telegrams to the danger of publicity, which the Commission felt obliged to secure them against.

It may not be improper in this connection to refer to a letter which affords contemporaneous documentary proof of the intent had in view by Congress by the provision requiring the expenses of the Commission to be audited by the proper accounting officers of the Treasury. This is a letter written to your petitioner by Senator Cullom, by whom the provision was introduced into the appropriation act of 1889, and which appears in 25 St., 939, and is herewith appended, marked "Moseley—Exhibit F."

That after the correspondence hereinafter set forth your petitioner, in order to have his said accounts settled, and not admitting that he was indebted to the United States for or on account of said disallowance by the accounting officers, paid into the Treasury of the United States the

sum of $310.37, so disallowed, and he now brings this suit to recover judgment for a like amount.

EDWARD A. MOSELEY.

DISTRICT OF COLUMBIA,
City of Washington:

Edward A. Moseley, being duly sworn, says that he is the petitioner in the foregoing petition, and that the matters set forth therein are true as he verily believes.

EDWARD A. MOSELEY.

Subscribed and sworn to before me this 26th day of January, 1901.

MARTIN S. DECKER,
Notary Public.

10 EXHIBIT A.

(Copy of voucher No. 249, in full.)

APPROPRIATION FOR INTERSTATE COMMERCE COMMISSION.

The United States, To Western Union Telegraph Co., Dr.

Interstate Commerce Commission, To Western Union Telegraph Company, Dr.

Date.		By whom sent.	City.	Number of words.	Cost.
1898.					
Nov.	2	Moseley to Prouty	Newport, Vt.	34	34
	5	Marchand to Campbell	St. Louis	20	25
	7	Marchand to Campbell	St. Louis	27	34
	9	Moseley to Purse	Savannah, Ga.	32	32
	11	Moseley to Calhoun	Danville, Ill	23	33
	12	Marchand to Seibert	Balto., Md.	27	33
	14	Moseley to Calhoun	Danville, Ill	28	28
	15	Decker to Smith	Charleston, S. C	30	30
	17	Burleigh to Pollock	St. Louis	29	36
		Burleigh to Miller	New York	24	24
		Marchand fr Arthur	Austin, Tex	29	44
		Marchand to Arthur	Austin, Tex	32	33
	18	Decker to Smith	Charleston, S. C	36	36
		Moseley to Mason	Pittsburg, Pa.	59	59
	19	Smith to Calloway	Minneapolis, Minn	80	1.00
	21	Burleigh fr Adams	Ann Arbor, Mich	28	28
		Connolly fr Marchand	Buffalo	19	20
		Shaver fr Gurley	New Orleans, La	30	38
		Shaver to Gurley	New Orleans, La	36	45
	22	Moseley fr Fellows	New York	20	20
		Moseley to Fellows	New Haven, Conn	26	26
	23	Decker to Smith	Charleston, S. C	24	24
		Knapp to Williamson	New York	41	41
	25	Decker to Smith	Charleston, S. C	23	33
	28	Prouty to Tomlinson	Chicago	32	32
		Burleigh to Wright	San Francisco	29	58
	29	Smith to Riddell	Kansas City, Mo	41	51
	30	Moseley to Fellows	Portland, Me	20	20
		Moseley to Mahoney	St. Louis, Mo	14	25
					89.96

(Across the face with red ink:) Paid by check No. 585086, on U. S. Treasurer to order of Western Union Tel. Co. Approved for $9.96. Signed—Martin A. Knapp Chairman.

For telegraphing in Nov. 1898 as per statement, $9.96.

Received at Washington, D. C., this 12 day of January, 1899, from Edward A. Moseley, Secretary and Disbursing Agent Interstate Commerce Commission, the sum of nine dollars and ninety-six cents, in full payment of the above account, having signed duplicate receipts therefor.

[Sign here.] WESTERN UNION TELEGRAPH CO.,
JAS. H. KING, *Cashier.*

I certify that the above account is correct; that the articles herein enumerated have been received or services performed; that they were necessary for, and have been, or will be, applied to the work of the Interstate Commerce Commission; and that, to the best of my knowledge and belief, the prices paid were reasonable and just.

E. A. MOSELEY,
Secretary, I. C. C.

[Duplicate.]

Voucher No. 249, 3 Quarter, 1899.

Appropriation for Interstate Commerce Commission.

Accounts of Edward A. Moseley, Secretary and Disbursing Agent, I. C. C.

Paid to Western Union Tel. Co.
For Telegrams.
Amount..... $9.96
Paid by Check No. 585086
For..... $9.96
Dated Janv. 12, 1899.
On U. S. Treasurer.

.....

11—3022

11	Above voucher brought forward	$9.96	
	Also the following similar vouchers:		
Western Union Telegraph Company, Voucher No.	138	29.41	
	143	23.81	
	192	25.58	
	193	1.09	
	195	24.36	
	301	19.40	
	328	38.58	
	359	18.84	
	440	24.93	
	495	26.85	
	553	31.18	
	576	33.73	
	605	.32	
			$308.04

Postal Telegraph Cable Company, Voucher No.	136	$0.20	
	240	.26	
	379	.49	
	442	.21	
	522	.30	
	585	.20	
	593	.67	
			$2.33
Total			$310.37

EXHIBIT B.

JUNE 15, 1900.

HON. R. J. TRACEWELL,

Comptroller of the Treasury, Washington, D. C.

SIR: I have the honor to transmit to you herewith a communication from the office of the Auditor for the State and other Departments, dated the 18th of May, 1900, from which it appears that the vouchers for certain disbursements made by me, as the disbursing agent of the Interstate Commerce Commission, for telegrams, a statement of which furnished by me and appearing in the communication, have been disallowed by the Auditor, "because of failure to furnish copies of all telegrams for which charge was made, or to furnish a certificate that such telegrams are of such confidential nature that to file them with the accounts would be prejudicial to the public interests."

I desire to appeal from this decision of the Auditor, disallowing these vouchers, and respectfully ask that such appeal be allowed and acted upon by you, as I am, indeed, expressly ordered by the Commission to do. I am ordered by the Interstate Commerce Commission to transmit to you certified transcripts from the proceedings of the Commis-
12 sion, of the dates of 27th April, 1899, and of 7th June, 1900, and I have the honor to enclose the same herewith.

The vouchers so disallowed were, as I am advised, held up, in the Office of the Auditor from the date they were laid before him for audit, to await the decision of the Court of Claims in the case then pending before it of Edward A. Moseley v. United States, involving the identical question presented here. The decision in that case was announced on April 2, 1900, and discloses the findings of fact and the conclusion of law ascertained by that court. The conclusion of law is stated as follows:

"The claimant's statement of account being in the form prescribed by statute, i. e., 'itemized vouchers therefor, approved by the chairman of the Commission,' is prima facie correct. The defendants do not controvert the fact of the expenditures therein shown to have been made under the direction of the Commission, nor of the money paid into the Treasury; and, as under the circumstances of this case we have no reason to doubt the correctness or legality of such expenditures, the claimant is entitled to recover, and judgment will be entered accordingly."

I beg to invite your attention to the fact found by the court, that the order of the Commission of 27th April, 1899, which is set out in the findings of fact, was a sufficient compliance with your regulations requiring a certificate of the chairman of the Commission as to the confidential

nature of the telegrams involved in that case, and to the further fact that the order of the Commission of 7th June, 1900, expressly declares that the order of April 27th, 1899, applies in its provisions to the messages covered by the vouchers suspended and now disallowed by the Auditor.

So, I respectfully submit, inasmuch as the vouchers now disallowed stood and now stand in the same predicament as those which the Court of Claims has by its decision distinctly adjudicated were adequate and in full compliance with the requirements of the statute, no reason is apparent why the judgment of the court should be disregarded and set
13 at naught, and the needless burden and expense imposed upon me of again appealing to that court for redress.

Very respectfully,

EDW. A. MOSELEY,
Secretary & Disbursing Agent.

EXHIBIT C.

Appeal No. 4554.

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE TREASURY,
July 23, 1900.

E. A. Moseley, secretary and disbursing agent Interstate Commerce Commission, by his letter filed June 16, 1900, appeals from the action of the Auditor for the State and other Departments on his account for disbursements on account of said Commission for the quarter ending March 31, 1900.

The matter complained of is the disallowance by the Auditor of the sum of $310.37, paid to the Western Union Telegraph Company and the Postal Telegraph Company for the transmission of telegrams, which the Auditor disallowed, "because of failure to furnish copies of all telegrams for which charge was made, or to furnish a certificate that such telegrams are of such a confidential nature that to file them with the accounts would be prejudicial to the public interests."

In 5 Comp. Dec., 700, the accounts of Mr. Moseley as such disbursing agent, relative to vouchers of the Western Union Telegraph Company and the Postal Telegraph Company, amounting to $73.24, were before the Comptroller for revision. In that case the Comptroller addressed a communication to Mr. Moseley calling for the original telegram or copies, to which Mr. Moseley made this response:

"The Commission instructs me to say that for the present it declines to submit copies of telegrams covered by these vouchers. Aside from the fact that it is impracticable to do so in some cases, a considerable number of the messages were highly confidential, and the Commission does not think it suitable that the contents should be known to every
14 clerk who has access to your files. These vouchers show the dates, number of words, places from and to which sent, and the charge for each message transmitted. The chairman has certified to their necessity, and approved the amount paid therefor. No law requires that copies shall be exhibited to the accounting officers, and any general regulation to that effect would be unreasonable as applied to the telegraphic business of the Commission.

"Entertaining this opinion, the Commission directs me to inquire whether you will insist on being furnished with copies of its telegrams?"

To this inquiry the Comptroller replied:

"If any of the telegrams were confidential, furnish a certificate from the chairman of the Commission stating that it would be prejudicial to the public interest to disclose the contents. Copies of all other telegrams are required."

On April 27, 1899, it was ordered by the Commission:

"That so much of the Comptroller's communication as requires copies of telegrams relating to the business of the Commission to accompany telegraph vouchers for which credit is asked be disregarded by the secretary and disbursing agent, the Commission holding that such messages are so far confidential as to justify refusal to disclose their contents, and that the requirement for their production is unreasonable and against the public interest."

It will be observed that the above order is applicable, not to any telegrams in particular, but to all telegrams—to those that had been sent at the time the order was made and to those that might be sent hereafter.

No satisfactory reply to the Comptroller's second call for evidence having been furnished, the charges for telegrams, amounting to $873.24, were disallowed by the Comptroller on April 17, 1899. Subsequently, Mr. Moseley brought suit in the Court of Claims to recover said $873.24. In that case, decided April 2, 1900, No. 21473, the court said:

"We are therefore inclined to the opinion that while the language 'that hereafter expenses of the Interstate Commerce Commission shall be audited by the proper accounting officers of the Treasury' did not repeal the former act requiring payment of such expenses to be made 'on the presentation of itemized vouchers therefor, approved by the
15 chairman of the Commission,' it did, nevertheless, so modify it as to subject such expenses to audit, 'and that such audit necessitates an examination as to the correctness and legality of such expenses, with such satisfactory proofs thereof as may be required by the accounting officers.'

"The alternate requirement of copies of telegrams, or, if they were confidential, a certificate to that effect from the chairman of the Commission, was not unreasonable, especially as but one certificate of that character appears to have been contemplated for each quarterly account."

By an order of the Commission, dated June 7, 1900, the provisions of the order of April 27, 1899, supra, were made to apply to the messages covered by the vouchers disallowed by the Auditor in the case now under consideration.

In 4 Comp. Dec., 237, in regard to withholding by the Secretary of War, for reasons similar to those stated by the Interstate Commerce Commission, of telegrams submitted as vouchers, it was said:

"Some unusual public interest may require the sending of a confidential telegram where secrecy is a public necessity. In such a case the suppression of such a message would be justified on the ground of paramount necessity, and the general requirement of accounting must yield. Such instances, fortunately, are of rare occurrence, and should not be made the excuse for the retention of all telegrams. When such an exceptional case presents itself a certificate of the Secretary of War may

be accepted in lieu of the messages, provided said certificate covers all material points."

I can see no reason why the rule that is applied to the War Department and to all other departments of the Government should not apply to the Interstate Commerce Commission. The fact that the Commission may send confidential telegrams where secrecy is a public necessity should not be made the excuse for the retention of all telegrams. The accounting officers are charged with the duty of passing upon accounts, and where disbursing agents claim credit for disbursing public money the accounting officers are entitled to the best evidence that such disbursements were legal and proper; and the general rule is that
16 where the disbursement is on account of telegrams, the telegrams themselves should accompany the vouchers. The telegrams show whether they were on public business, from whom and from where, and to whom and to where sent, whether day or night messages, the number of words, whether over bond-aided lines, and whether the charge for the same message had been made in some other account, etc. To this general rule there is an exception. If the chairman of the Interstate Commerce Commission had certified that any particular telegrams sent by the Commission were of a confidential character, and that it would be prejudicial to the public interest to disclose their contents, and such certificate covered all material points necessary to a correct audit, such certificate would have been accepted in lieu of the telegrams. Such a requirement is not unreasonable, and I can not see that it will work any greater inconvenience to the Commission than it does to all the other Departments of the Government.

The certificate should be signed by the Chairman of the Commission, and the account should be attached to it and made part of it by distinguishing marks, so that it is made certain that the particular account is supported by the certificate.

The action of the Auditor is affirmed, and upon revision I find and certify no differences.

L. P. MITCHELL,
Acting Comptroller.

EXHIBIT D.

OCTOBER 4, 1900.

To the COMPTROLLER OF THE TREASURY.

SIR: In my accounts as disbursing agent for the Interstate Commerce Commission for the quarter ending March 31, 1900, there was an item of $310.37, being the aggregate amount paid by me to the Western Union Telegraph Company for the transmission of telegrams on the official business of the Commission.

This entire item was disallowed by the Auditor for the State and other Departments, "because of failure to furnish copies of all telegrams for which charge was made, or to furnish a certificate that such telegrams are of such a confidential nature that to file them with the accounts would be prejudicial to the public interests."

17 It is not my intention, and it would serve no useful purpose, to recite here all the considerations which were vainly urged upon you in the correspondence between us in regard to similar action on your part,

in a case identical in all its material features with the present, which has passed into judgment.

In that case the Court of Claims, to which I was driven for redress, gave judgment in my favor for the full amount, which you had disallowed.

The facts upon which that judgment was formed, as well as the reasons which compelled the judgment, are identical with those existing in the present case, and must inevitably, in that tribunal, lead to like results.

It is true that the Court of Claims, in its opinion in that case, said:

"The alternative requirement of copies of telegrams, or, if they are confidential, a certificate to that effect from the Chairman of the Commission, was not unreasonable, especially as but one certificate of that character appears to have been contemplated for each quarterly account."

But it immediately adds:

"The question before us is, Are the payments shown in the accounts to have been made to the several telegraph companies proper and legal charges against the Government?" and this question the court answered in the affirmative and in accordance with the prayer of my petition.

With the merely abstract question of the reasonableness or unreasonableness of the rules and regulations adopted for the government and conduct of your office, I have nothing to do. Against your attempted application, however, of such rules and regulations to my official conduct, and especially the reiterated attempts to require of me the production of papers that are not within my control and which I am prohibited by the Commission, whose agent I am, from disclosing to the scrutiny of all the employees in the accounting offices of the Treasury, I do protest, and again refer the matter to that sense of propriety and justice which should be the guide of all official action.

It appears from your own opinion in this case that the Interstate
18 Commerce Commission, on June 7, 1900, made the same certificate as to the telegrams involved here as was made by it on Apr 27, 1899, as to the telegrams in the former case.

The Commission has complied substantially, if not literally, with the requirement of your office, in certifying that "such messages are so far confidential as to justify refusal to disclose their contents."

One fact is manifest, and that a fact relied on by the Court of Claims in the case decided by it, to wit:

"The defendants do not controvert the fact of the expenditures therein shown to have been made under the direction of the Commission, nor of the money paid into the Treasury, and as under the circumstances of this case we have no reason to doubt the correctness or legality of such expenditures, the claimant is entitled to recover, and judgment will be entered accordingly."

In what particular can this case be distinguished as to these features from the case in which that reason for judgment was assigned?

I think it unseemly that such a controversy as this should be waged between two officials of the Government, engaged in the common endeavor for a pure and correct administration, and I am unwilling, on my part, that even the appearance of contumacy or of frivolous obstruction should be imputed to me.

The grave and substantial objection has been made by the Commission that the exposure of its telegrams to the numerous Treasury employees

who might have access to them were they filed as exhibits with the disbursing agent's accounts would very seriously impair the efficiency of the Commission.

By the act of March 15, 1898, acts 1897–98, page 316, it is provided:

"Sec. 5. All books, papers, and other matters relating to the accounts of officers of the Government in the District of Columbia shall at all times be subject to the inspection and examination by the Comptroller of the Treasury and auditors of the Treasury authorized to settle such accounts, or by the duly authorized agents of either of said officers."

I am authorized by the Commission to extend to the officers and agents referred to in this section the fullest opportunity of making such
19 examination, in the offices of the Commission, of all such books, papers, and other matter relating to the accounts of the disbursing agents as they may see proper to examine, and, among these, all such telegrams as are embraced in the accounts of the disbursing agent. By this means the objections which the Commission have made to the undue publicity of their telegrams will, in some measure, be avoided, and the purposes of the auditing officers should thereby be fully attained.

I respectfully ask that the action of the auditing and reviewing officers as to the item of $310.37 for telegrams in my accounts for the quarter ending March 31, 1900, be reconsidered, and the tender here made of all such books and papers in the offices of the Commission be accepted by you as a compliance with the requirement of your office.

Very respectfully,

EDW. A. MOSELEY,
Secretary.

EXHIBIT E.

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE TREASURY,
Washington, October 6, 1900.

E. A. MOSELEY, Esq.,
Secretary and Disbursing Agent, Interstate Commerce Commission.

SIR: I am in receipt of your communication of the 4th instant, wherein, I assume, you intend to request that I review the decision of this office of the date of July 23d last, signed by the Acting Comptroller, in which the action of the Auditor was affirmed disallowing an item in your account for the sum of $310.37 paid by you to the Western Union Telegraph Co. and the Postal Telegraph Co. for the transmission of certain telegrams, because of your failure to furnish copies of such telegrams, or to furnish a certificate that the same were confidential in their nature, signed by the chairman of the Interstate Commerce Commission.

I know of no reason why the Interstate Commerce Commission should not be subject to the same rules of evidence relative to telegrams as other bureaus and departments of the Government. This rule requires that copies of all telegrams be submitted, or, if they are confidential, a certificate to that effect from the head of the Department.

20 This is a reasonable rule, and I cannot see my way clear to relax it and accept your offer to exhibit these telegrams to my

agents when performing their duties under the act of March 15, 1898 (30 Stat., 316). This act is in no way connected with the question of proper proof to be required before allowing a disbursing officer credit for a sum claimed to have been disbursed by him.

If you expect credit as a disbursing officer in your account, you will have to comply with the reasonable requirements of the accounting officers as to the proof required.

Respectfully, R. J. TRACEWELL,
Comptroller.

EXHIBIT F.

UNITED STATES SENATE,
Washington, D. C., September 15, 1899.

HON. EDWARD A. MOSELEY,
Secretary Interstate Commerce Commission, Washington, D. C.

MY DEAR SIR: I understand that you are having some trouble in having your accounts settled by the First Comptroller. I am a little surprised at this, because the question was raised once before, and in the sundry civil bill of March 2, 1889, the following proviso was inserted:

"Provided, that hereafter expenses of the Interstate Commerce Commission shall be audited by the proper accounting officers of the Treasury."

This provision was inserted by me, as I recollect it, in the Committee on Appropriations of the Senate, at the request of the Interstate Commerce Commission and yourself, and in the form desired by you. It was intended to provide for the crediting of such vouchers as had been approved by the chairman of the Commission, and for the passage of your accounts without unnecessary delay. This proviso I supposed would do away with any further trouble in the passage of your accounts as presented.

Very truly, yours, S. M. CULLOM.

21 EXHIBIT G.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 27th day of April, A. D. 1899.

Present: Hon. Martin A. Knapp, chairman; Hon. Judson C. Clements, Hon. James D. Yeomans, Hon. Charles A. Prouty, Commissioners.

The following proceedings were had, to wit:

REVISION OF ACCOUNTS.

The subject of the revision of accounts of the secretary and disbursing agent of the Commission by the Comptroller of the Treasury being under consideration, the secretary presented a communication from the Comptroller, dated April 17, 1899, relating, among other things, to the telegraphic messages of the Commission.

It was ordered that so much of the Comptroller's communication as requires copies of telegrams relating to the business of the Commission to accompany telegraph vouchers for which credit is asked be disregarded by the secretary and disbursing agent, the Commission holding that such

messages are so far confidential as to justify refusal to disclose their contents, and that the requirement for their production is unreasonable and against the public interest.

It was also ordered, in accordance with the practice heretofore always required by the Commission, that no telegraph bills be paid by the disbursing agent except upon itemized vouchers showing the date, name of sender and receiver, places from and to which sent, number of words, and amount charged of each message paid for, and only after such
22 itemized vouchers have been carefully compared with the messages on file with the Commission.

A true copy?
[SEAL.]

EDW. A. MOSELEY,
Secretary.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 7th day of June, A. D. 1900.

Present: Hon. Martin A. Knapp (chairman), Hon. Judson C. Clements, Hon. James D. Yeomans, Hon. Charles A. Prouty, Hon. Joseph W. Fifer, commissioners.

The following proceedings were had, to wit:

EXAMINATION OF ACCOUNTS.

The subject of the examination of the accounts of the secretary and disbursing agent of the Commission by the Auditor for State and other Departments being under consideration, the Secretary presented a statement of differences amounting to $310.37, dated May 18, 1900, relating to telegraphic messages of the Commission disallowed by said Auditor "because of failure to furnish copies of all telegrams for which charge was made, or to furnish a certificate that such telegrams are of such a confidential nature that to file them with the accounts would be prejudicial to the public interests."

It was ordered that the secretary appeal to the Comptroller of the Treasury from this decision of the Auditor, and furnish the Comptroller with a copy of the order of the Commission of April 27, 1899, the provisions of which apply to the messages covered by the vouchers suspended and now disallowed by the Auditor.

A true copy:
[SEAL.]

EDW. A. MOSELEY,
Secretary.

23 II.—TRAVERSE. *Filed June 10, 1901.*

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attor-

ney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

L. A. PRADT,
Assistant Attorney-General.

24 III.—FINDINGS OF FACT AND CONCLUSION OF LAW. *Filed October 28, 1901.*

This case having been heard before the Court of Claims, the court, upon the evidence, makes the following

FINDING OF FACT.

I.

The claimant herein, a citizen of the United States, is secretary and disbursing agent of the Interstate Commerce Commission, and as such agent it becomes his duty to disburse the moneys appropriated by Congress from time to time to enable the Commission to carry out the provisions of the act of February 4, 1887, and amendments thereto. The disbursements were made under the direction of the Commission; and the accounts therefor, together with itemized vouchers, approved by the chairman of the Commission, were presented to the accounting officers of the Treasury Department for the quarter and year ending June 30, 1899; and also his supplemental accounts, with vouchers so made out and approved, for the same year, among which were the accounts and itemized vouchers for $310.37 for money paid from time to time to the Western Union Telegraph Company and Postal Telegraph Cable Company for sundry dispatches sent over their lines under the direction of said Commission.

II.

The accounts for money so expended for telegrams were disallowed by the Auditor for the State and other Departments, and on appeal to the Comptroller of the Treasury the decision of the Auditor was sustained on the ground that the claimant had not complied with the requirement of the Comptroller to furnish the original telegrams or copies thereof, or, if of a confidential nature, to furnish in lieu thereof a certificate to that effect signed by the chairman of the Commission.

In response to that ruling the claimant presented and filed with his said accounts the following order, issued by the Commission April 27, 1899:

"That so much of the Comptroller's communication as requires copies of telegrams relating to the business of the Commission to
25 accompany telegraph vouchers for which credit is asked be disregarded by the secretary and disbursing agent, the Commission holding that such messages are so far confidential as to justify refusal to disclose their contents, and that the requirement for their production is unreasonable and against public interest."

And that the Interstate Commerce Commission did, through their secretary, address to the Hon. R. J. Tracewell, Comptroller of the Treasury, a letter dated October 4, 1900, containing an invitation to

inspect the books, papers, and other matters relating to the accounts of the disbursing agent, as follows, viz:

"By the act of March 15, 1898, acts 1897–98, page 316, it is provided:

"'SEC. 5. All books, papers, and other matters relating to the accounts of officers of the Government in the District of Columbia shall at all times be subject to the inspection and examination by the Comptroller of the Treasury and Auditors of the Treasury authorized to settle such accounts or by the duly authorized agents of either of said officers.'

"I am authorized by the Commission to extend to the officers and agents referred to in this section the fullest opportunity of making such examination, in the offices of the Commission, of all such books, papers, and other matter relating to the accounts of the disbursing agents as they may see proper to examine, and among these all such telegrams as are embraced in the accounts of the disbursing agent. By this means the objections which the Commission have made to the undue publicity of their telegrams will, in some measure, be avoided, and the purposes of the auditing officers should be thereby fully attained."

But the decision of the Comptroller was adhered to.

III.

The accounts and itemized vouchers were presented to the accounting officers in the form prescribed by statute; that is to say, that each telegram sent by the Commission, and the cost thereof, and the dates, number of words, persons from and to whom sent, places from and to which sent, and the charge for each message transmitted, were fully shown in a voucher approved by Martin A. Knapp, chairman, and the defendants concede the correctness of the several amounts so expended.

IV.

After the disallowance of the claimant's accounts for the moneys so disbursed to the Western Union Telegraph Company and Postal Telegraph Cable Company, as aforesaid, and to avoid any balance being stated against him, he, under protest, paid into the Treasury of the United States the full amount of the sum so disallowed, to wit, $310.37.

V.

That prior to January, 1899, the original telegrams, or copies thereof, or certificates that such telegrams were of a confidential character,
26 were not required by the auditing officers of the Treasury to be produced by the disbursing officers of the Department of State, or the Post-Office Department, or the Navy Department, or the Interstate Commerce Commission, with the vouchers produced by these disbursing officers, for the telegrams sent from such Departments on official business.

VI.

The correspondence by official communications between the Comptroller of the Treasury and the claimant appears in the letter of June 15,

1900, from Edward A. Moseley, secretary and disbursing agent, to Hon. R. J. Tracewell, Comptroller; the letter of July 23, 1900, from the Acting Comptroller to the claimant; the letter of October 4, 1900, from the claimant to the Comptroller, and the letter of October 6, 1900, to the claimant; all of which were filed as part of the claimant's petition and exhibits therewith.

CONCLUSION OF LAW.

From the foregoing findings of fact the court decides, as a conclusion of law, that the claimant is entitled to recover judgment against the United States, on the authority of the Moseley case (35 C. Cls. R., 347), in the sum of three hundred and ten dollars and thirty-seven cents ($310.37).

By the Court.

Filed October 28, 1901.

27 IV.—JUDGMENT OF THE COURT.

EDWARD A. MOSELEY }
v. } No. 22494.
UNITED STATES. }

At a Court of Claims held in the city of Washington on the 28th day of October, A. D. 1901, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant and do order, adjudge, and decree that Claimant Edward A. Moseley do have and recover of and from the United States the sum of three hundred and ten dollars and thirty-seven cents (310\frac{37}{100}$).

By THE COURT.

28 V.—APPLICATION FOR AND ALLOWANCE OF APPEAL.

EDWARD A. MOSELEY }
v. } No. 22494.
UNITED STATES. }

From the judgment rendered in the above-entitled cause on the 28th day of October, 1901, in favor of the claimant, the defendants, by their Attorney-General, on the 21st day of January, 1902, make application for, and give notice of, an appeal to the Supreme Court of the United States.

LOUIS A. PRADT,
Asst. Attorney-General.

Let the appeal be allowed.
February 8, 1902.

CHAS. C. NOTT,
Chief Justice.

29 Court of Claims.

EDWARD A. MOSELEY)
v.) No. 22494.
UNITED STATES.)

I, John Randolph, assistant clerk Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact and conclusion of law, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 12th day of February, A. D. 1902.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) File No., 18412, Court of Claims. Term No., 559. The United States, appellant, vs. Edward A. Moseley. Filed February 24th, 1902.

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